



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,257	09/12/2000	Don Wiley Smith	22601-P002US	6780

7590 12/27/2002

Winstead Sechrest & Minick PC  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, TX 75270

EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



# Office Action Summary

Application No.

09/660,257

Applicant(s)

SMITH ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_



Art Unit: 3643

## DETAILED ACTION

### *Affidavits pursuant to 37 CFR § 132.*

The affidavits of Russell, Cooper, and Martin under 37 CFR 1.132 filed 7 October 2002 is sufficient to overcome the rejection of claims 1-25 based upon Mehra-Palta. New art has been applied.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 18, 20-22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 4,872,899) in view of Dale (Fred Dale Special to The Star).

As to Claim 1, Miller discloses a method of treating established (defining "mature" of col. 9 line 66 as established) distressed (general teaching from "iron chlorosis" of abstract) tree species (col. 9 lines 66), the root system in soil (col. 9 lines 62-63) comprising applying a mixture to the root area (col. 9 lines 62-67). Not disclosed are the steps of creating a mixture of a fertilizer and a growth hormone. Dale discloses the step of creating a mixture of fertilizer and a root hormone (page 2 1<sup>st</sup> para.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Miller by using with the mixture Dale so as to increase plant growth.



As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is the distressed tree a Post Oak. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale to use with Post Oak since this species are grown property owners.

As to Claim 4, Miller as modified by Dale further disclose a mixture of powders (see Dale).

As to Claims 5 and 7, Miller as modified by Dale further disclose a mixture of liquids ("drench" of Miller at col. 9 line 63).

As to Claim 6, the limitations of Claim 1 are disclosed as described above. Miller as modified by Dale further disclose a fertilizer with an N content of 10% and a potassium content of 10% (see Dale). Not disclosed is the P content at 25%. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale by using a fertilizer with a P content of 25% depending upon availability of fertilizers.

As to Claim 18, Miller discloses a method of treating a distressed (general teaching from "iron chlorosis" of abstract) tree species (col. 9 lines 66) comprising creating a hole in a root area of a tree ("banded near root zone of row crops (commercial crops, vines, trees) of Miller at col. 9 lines 64-65). Not disclosed is applying a mixture of fertilizer and root growth hormone. Dale, however, discloses the step of creating a mixture of fertilizer and a root hormone (page 2 1<sup>st</sup> para.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Miller by using with the mixture Dale so as to increase plant growth.



Art Unit: 3643

As to Claim 20, the limitations of Claim 18 are disclosed as described above. Not disclosed is creating the hole with a water jet. Examiner takes official notice that it is old and notoriously well known to make a hole with a water jet. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale by using a water jet so as to make the hole in an easy manner.

As to Claim 21, Miller as disclosed by Dale further discloses watering and drying (inherent in "Do not water again until the soil surface is quite dry" of Dale page 2 1<sup>st</sup> para.).

As to Claim 22, Miller discloses a kit for treating established (defining "mature" of col. 9 line 66 as established) distressed (general teaching from "iron chlorosis" of abstract) tree species (col. 9 lines 66), the root system in soil (col. 9 lines 62-63) comprising a mixture (ferrated rhodotorulic acid" of col.9 line 62); a container (inherent in "banded" of col. 9 line 64); and, a tool for applying the mixture to the root system within the soil (inherent in "banded" of col. 9 line 64). Not disclosed the mixture containing a fertilizer and a growth hormone. Dale discloses a mixture of fertilizer and a root hormone (page 2 1<sup>st</sup> para.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the kit of Miller by using with the mixture Dale so as to increase plant growth.

As to Claim 24, the limitations of Claim 22 are disclosed as described above. Not disclosed are instructions for applying the mixture. Examiner takes official notice that it is old and notoriously well known in the agronomic art on the instructions as to how to apply fertilizer by banding (col. 9 line 64 of Miller). It would have been obvious to one of ordinary skill in the



Art Unit: 3643

art at the time of the invention to further modify the kit of Miller as modified by Dale by having instructions so as to band correctly.

As to Claim 25, Miller as modified by Dale further disclose an implement for applying the mixture (inherent in "banded" of Miller col. 9 line 64).

Claims 2, 8-17, 19, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 4,872,899) in view of Dale (Fred Dale Special to The Star) in further view of Green Light Rootone.

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is the use of NAA for the growth hormone. Green Light Rootone, however, discloses the use of NAA as a growth hormone. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale by using Rootone as the growth hormone as disclosed by Green Light Rootone as a known effective root stimulant for use with a wide variety of plants (see Green Light Rootone).

As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the mixture further including a fungicide. Green Light Rootone, however, discloses use of Thiram in a root mixture. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale by using Rootone which includes Thiram as disclosed by Green Light Rootone so as to increase plant growth.



As to Claim 10, Miller discloses mixture (defined as "drench" of Col. 9 line 63) for treating adult (defining "mature" of col. 9 line 66 as established) distressed (general teaching from "iron chlorosis" of abstract) tree species (col. 9 lines 66), the root system in soil (col. 9 lines 62-67). Not disclosed is the mixture comprising a fertilizer and NAA. Dale discloses a mixture of fertilizer and a root hormone (page 2 1<sup>st</sup> para.). Green Light Rootone discloses a root growth hormone of NAA. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the mixture of Miller by using the mixture Dale so as to increase plant growth and to further modify the mixture by using Rootone as disclosed by Green Light Rootone depending upon availability of growth hormones.

As to Claim 11, the mixture of Miller as modified by Dale as further modified by Green light Rootone further disclose the hormone comprising about 0.1% weight of the powder (defining "0.2%" as about 0.1% at Green Light Rootone).

As to Claim 12, the mixture of Miller as modified by Dale as further modified by Green light Rootone further disclose the hormone comprising about 0.1% weight of the liquid (defining "0.2%" as about 0.1% at Green Light Rootone) when applied as a liquid ("drench" of Miller at col. 9 line 63).

As to Claim 13, the limitations of Claim 10 are disclosed as described above. Not disclosed is a dosage of .335 milligrams per application site. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the mixture of Miller as modified by Dale and Green Light Rootone by using the specific growth hormone concentrations of .335 milligrams per application site so as to optimize the system and promote healthy root growth.



As to Claim 14, the limitations of Claim 10 are disclosed as described above. Miller as modified by Dale and Green Light Rootone further disclose a fertilizer with an N content of 10% and a potassium content of 10 % (see Dale). Not disclosed is the P content at 25%. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale and Green Light Rootone by using a fertilizer with a P content of 25% depending upon availability of fertilizers.

As to Claim 15, Miller as modified by Dale and Green Light Rootone further disclose a mixture of liquids ("drench" of Miller at col. 9 line 63).

As to Claims 16 and 17, Miller as modified by Dale and Green Light Rootone further disclose Thiram in a root mixture (see Green Light Rootone).

As to Claim 19, the limitations of Claim 18 are disclosed as described above. Not disclosed is the use of NAA for the growth hormone. Green Light Rootone, however, discloses the use of NAA as a growth hormone. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Miller as modified by Dale by using Rootone as the growth hormone as disclosed by Green Light Rootone as a known effective root stimulant for use with a wide variety of plants (see Green Light Rootone).

As to Claim 23, the limitations of Claim 22 are disclosed as described above. Not disclosed is the growth hormone being NAA. Green Light Rootone, however, discloses the use of NAA as a growth hormone. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the kit of Miller as modified by Dale by using



Art Unit: 3643

Rootone as the growth hormone as disclosed by Green Light Rootone as a known effective root stimulant for use with a wide variety of plants (see Green Light Rootone).

### *Response to Arguments*

Applicant's arguments filed 7 October 2002 have been fully considered but are moot with respect to the Mehra-Palta. New art has been applied.

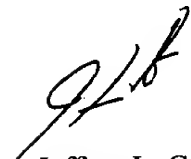
### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Aswell discloses in the prior art applying fertilizer to the root zone.

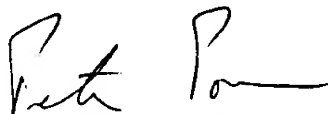
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600